

8-19-2013

State v. Kesling Appellant's Reply Brief Dckt. 39484

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 39484 & 39485 & 39486
)	
v.)	ADA COUNTY NOS. CR 2003-557,
)	2003-379 & 2003-589
)	
SHAWN M. KESLING,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

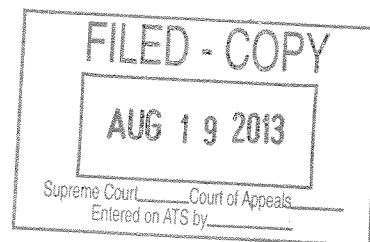
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DEFENDANT-APPELLANT**

**ATTORNEY FOR
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TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF THE CASE.....	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings.....	1
ISSUE PRESENTED ON APPEAL	2
ARGUMENT.....	3
The District Court Erred When It Denied Mr. Kesling's Motion For Credit For Time Served	3
A. Introduction	3
B. The District Court Erred When It Denied Mr. Kesling's Motion For Credit For Time Served.....	3
CONCLUSION	5
CERTIFICATE OF MAILING.....	6

STATEMENT OF THE CASE

Nature of the Case

Shawn Kesling appeals following the district court's order correcting judgment pursuant to I.C.R. 35(a) and the district court's order denying his motion for credit for time served. Mr. Kesling asserts that the district court erred in revoking his probation in 39486 as the probationary term had expired.¹ Mr. Kesling also asserts that the district court erred when it denied his motion requesting credit for time served on his Idaho sentences, as he was held pursuant to a detainer warrant twenty days before he had finished serving his Florida sentence. Mr. Kesling contends on appeal that the district court did not have jurisdiction to revoke his probation in 39486, and it abused its discretion by denying his motion for credit for time served in his cases.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Kesling's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

¹ Supreme Court Docket No. 39484 (district court case number 2003-557 (*hereinafter*, 39484)), Supreme Court Docket No. 39485 (district court case number 2003-589 (*hereinafter*, 39485)), and Supreme Court Docket No. 39486 (district court case number 2003-379 (*hereinafter*, 39486)) have been consolidated for appellate purposes. (R., pp.2-3.) In docket number 39484, Mr. Kesling was convicted of one count of felony forgery. (R., pp.61-65.) In docket number 39485, Mr. Kesling was convicted of one count of grand theft by deception. (R., pp.228-232.) In docket number 39486, Mr. Kesling was convicted of one count of felony issuing a check without funds. (R., pp.418-422.) Because the State has conceded that the district court did not have jurisdiction to revoke Mr. Kesling's probation in 39486, therefore, Appellant's Reply Brief will focus exclusively on the issue of credit for time served. (Respondent's Brief, pp.7-8.)

ISSUE

Did the district court err when it denied Mr. Kesling's motion for credit for time served?

ARGUMENT

The District Court Erred When It Denied Mr. Kesling's Motion For Credit For Time Served

A. Introduction

Mr. Kesling asserts that the district court erred when it denied his request for credit for time served. First, as Mr. Kesling was being held on a detainer warrant to later be transported back to Idaho to answer for his alleged probation violations, he was not released by Florida authorities after he had completed his sentence. Second, in light of the fact that this information prohibited Mr. Kesling from being released, such constitutes a warrant *per se*, and he should receive credit in his Idaho cases for all time served on after the placement of the detainer warrant on March 2, 2011. For the reasons set forth herein, he respectfully requests that this Court order that he be given credit for time served in the amount of twenty days.

B. The District Court Erred When It Denied Mr. Kesling's Motion For Credit For Time Served

Mr. Kesling filed a Motion for Additional Credit Time Served which requested 1,121 more days of credit for time served from the date the Probation and Parole detainer warrant was lodged until the date that the Bench Warrant was officially served, on March 29, 2011. (R., pp.132-141, 298-307, 491-500.) On appeal, Mr. Kesling, after realizing that the record established that a "notify" was placed on Mr. Kesling on March 4, 2008, and a "detain" was not placed on Mr. Kesling until March 2, 2011, narrowed his request to credit for time served from 1,121 days to 20 days in order to comport with the available information. (Presentence Investigation Report (*hereinafter*, PSI, p.130.) There is no evidence that Mr. Kesling was ever released from the Idaho

detainer warrant and, in fact, the district court acknowledged that Mr. Kesling had been eligible for release for a number of days before the bench warrant was actually served on him and credited Mr. Kesling with the seven days from the completion of his Florida sentence to the time he arrived in Idaho and was served with the bench warrant. (12/8/11 Tr., p.27, L.12 – p.29, L.4.) The district court correctly found that Mr. Kesling was being held in Florida related to his Idaho charges, but denied Mr. Kesling's motion for credit for time served. (See 12/8/11 Tr.)

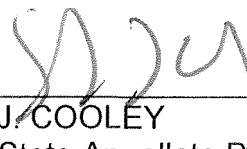
This issue was properly presented and preserved below. Mr. Kesling originally asked for 1,121 days of credit, dating back to the date on which the "inquiry" was placed on his status, believing in good faith that this was a detainer warrant. (R., p.298.) However, after it came to Mr. Kesling's attention that he was likely not "detained" until March 2, 2011, he modified his request to the time which he was "detained" on the Idaho charges. (See PSI, pp.124, 130.) So although on appeal Mr. Kesling did not ask for the full 1,121 days he initially asked for, he has in fact narrowed his request to be more specific due to additional information brought to his attention. Clearly the 20 days were included in the 1,121 calculation, so the issue was properly before the district court.² He is asking for this Court to review the order of the district court denying his motion for credit for time served, and order that he be given additional credit for time served in the amount of 20 days.

² For this Court to hold otherwise would encourage litigants to file numerous motions each time they recalculate their credit and also discourage litigants from filing motions which attempt to narrow the specific issue(s) on appeal.

CONCLUSION

For the reasons set forth herein and in his Appellant's Brief, Mr. Kesling respectfully requests that this Court vacate the district court's order revoking his probation in case number 39486 and order that case be closed. Further, Mr. Kesling respectfully requests that this Court order that he be given additional credit for time served in the amount of twenty days in his cases.

DATED this 19th day of August, 2013.



SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of August, 2013, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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SICI
PO BOX 8509
BOISE ID 83707

DARLA S WILLIAMSON
DISTRICT COURT JUDGE
E-MAILED BRIEF

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SJC/eas